

Tax Map/Block/Parcel  
No. 53-14-546

Building Permit/Zoning  
Certificate No. 90-1369

Case 3378

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPLICANT:** Carroll Sign Company, Inc.  
T/A Trone Outdoor Advertising  
P.O. Box 1865  
York, Pennsylvania 17405

**ATTORNEY:** Thomas F. Stansfield, Esquire  
1 Court Place  
Westminster, Maryland 21157

**REQUEST:** A variance to the maximum height of 30 feet,  
measured from the grade of the adjacent roadway,  
including any extensions or cutouts for an  
outdoor advertising sign on the premises

**LOCATION:** 2112 Old Westminster Pike in Election District 4

**BASES:** Article 14, Division II, Section 14.24(b)(1);  
Article 15, Section 15.5; Ordinance 1E (The  
Carroll County Zoning Ordinance)

**HEARING HELD:** May 25, 1990

On May 25, 1990, the Board of Zoning Appeals heard testimony and received evidence concerning the request for a variance to the maximum height of 30 feet, measured from the grade of the adjacent roadway, including any extensions or cutouts for an outdoor advertising sign on the premises of 2112 Old Westminster Pike.

The Board visited the site on May 23, 1990, prior to the public hearing.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will authorize the variance as requested.

Upon a request by applicant's counsel, the Board ordered that the record of this case be held open for a period of 10 days to allow submission of a location survey to assist in determining the zoning district in which the sign is located. It has been determined that an official survey of the location of the sign is not available, and applicant's attorney has requested that the Board consider granting the variance based on the presumption that the sign is located within the "B-L" Local Business District. An engineering firm has been retained to establish the

location of the sign, and if it is determined that the sign is not located within the "B-L" Local Business District, the violation would then have to be resolved. The Board concurs with counsel's recommendation.

The pertinent findings determining the Board's decision include the following facts.

#### FINDINGS OF FACT

As depicted by the site location map used to post the Hearing Notice, the 9.7 acre property fronts on Old Westminster Pike and Sandymount Road. The property is owned by Edward T. Kowall, and leased to Carroll Sign Company, Inc. for purposes of the outdoor advertising sign. Until recently, the property included the southwesterly corner of the Sandymount Road and Westminster Pike (Md. Rt. 140) intersection. That portion of the property was sold and grading of the site is progressing for construction of an automotive fuel station. With the sale of the property the outdoor advertising sign, which was originally located within that area, had to be removed and relocated on the remaining property.

Mr. Bolden, General Manager for Carroll Sign Company, Inc., filed Permit Application and Zoning Certificate 87-3210 on October 26, 1987, to relocate the sign further from the road (Md. Rt. 140) and further up the hill. (Applicant's Exhibit 1.) The Zoning Certificate was authorized based on the proposed location of the sign being in the "B-L" Local Business District, a maximum proposed height of the sign of 30 feet, and sign areas of 360 and 376 square feet which are less than the 380 square feet per side allowed by the zoning ordinance for the sign.

As evidenced by the photocopy of the Use and Occupancy Permit (87-3210), a part of the application form, it was necessary to modify the form to enter the proposed square footage of the signs, and the proposed height. Although the form reads, "MIN BY ORD" for both the square footage and height, it should have been corrected to indicate maximum by ordinance. In addition, the fact that the height of the sign is measured from the grade of the adjacent roadway should have been specified on the application. It was not.

Following issuance of the permit, the sign was erected, and a Certificate of Use and Occupancy was issued. (Applicant's Exhibit 2.) Early in 1990 the Bureau of Zoning Enforcement received a complaint regarding the height of the sign above the grade of the adjacent roadway (Md. Rt. 140). On February 6, 1990 the sign was inspected and found to be in violation of the maximum height requirement. A Notice of Violation was issued February 12, 1990 regarding the height of the sign and citing the zoning district as "R-10,000" Residence District. On March 27, 1990, a follow up inspection was made.

On April 19, 1990, Mr. Bolden of Carroll Sign Company, Inc., filed the Application for Hearing requesting a variance to the maximum height for the sign. An appeal of the Notice of Violation was added to the application sometime after it was originally prepared. On April 26, 1990, a second Notice of Violation was issued identifying the zoning district as "B-L" Local Business District instead of "R-10,000" Residence District and ordering the sign to be lowered to meet the requirements of the zoning ordinance.

Since the appeal was not filed timely with regard to the issuance of the first Notice of Violation and was filed in advance of the issuance of the second Notice of Violation, the Board will consider the appeal to be moot.

The sign is located on an incline sloping upward from Westminster Pike (Md. Rt. 140). The top of the sign is 30 feet above the grade of the ground beneath the sign. The maximum height of the sign is approximately 45 feet above the grade of Westminster Pike and 51 feet above the grade of Sandymount Road. The bottom of the sign is about 18 feet above ground level, and the vertical dimension of the sign is 12 feet. The base of the sign is about 15 feet above the grade of Westminster Pike. ( $15' + 18' + 12' = 45'$  maximum height of sign above grade of Westminster Pike.)

As depicted on the plot plan submitted with the permit application, (Applicant's Exhibit 1), the sign is 321 feet from the center line of Sandymount Road, and an unspecified distance from Md. Rt. 140. However, the distance to the right of way line of the Westminster Pike is probably more than 100 feet. Due to the relative distance of the sign from Sandymount Road, and the corner property now separating the sign from Sandymount Road, Westminster Pike will be designated as the adjacent roadway.

Mr. Bolden testified that at the time he applied for the sign permit and its subsequent erection, he was unaware that the height of the sign was measured from the grade of adjacent roadway, and that the sign was not erected until after the permit was issued. He stated that the Zoning Administrator checked the zoning map and scaled the distance of the business district relative to the then proposed location of the sign, before authorizing the permit application.

Mr. Bolden also testified that the variance to the maximum height is necessary in order for the sign to be visible to eastbound motorists following construction of the automotive fuel station, including the station's own signs, on the corner; if the visibility of the sign is diminished, it will substantially lessen the sign's value and marketability; lowering the sign to comply with the governing regulation will increase the risk of vandalism; and, reduction of the sign's height would be difficult and costly because of its construction.

An adjacent resident and property owner testified in opposition to the relocation of the sign, and to the variance, claiming that the sign now adversely affects residents in an adjacent subdivision, whereas in its original location, there was none.

The Chief of Zoning Enforcement, Mr. George L. Beisser, testified regarding the permit application, Notices of Violation, and in opposition to the variance.

#### APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

Article 14, Special Provisions; Division II, Signs; Section 14.24, "Use off the premises" signs, paragraphs (a), and (b)(1) read respectively:

- (a) Outdoor advertising signs pertaining to use "off premises" shall be a principal permitted use in the "B" and "I" districts.
- (b) Outdoor advertising signs shall be subject to the following restrictions:
  - (1) A maximum height of thirty (30) feet, measured from the grade of the adjacent roadway, including any extensions or cutouts.

Article 20, Definitions; Section 20.39, Variance, states:

A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

Article 15; Exceptions and Modifications; Sections 15.0, Generally, and 15.5, Variance, read respectively and in relevant part:

The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from...sign regulations.... The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare.

#### REASONING

There is no evidence of deception by the applicant in filing the Permit Application and Zoning Certificate, or in erecting the sign. Neither the application nor building permit issued for construction of the sign specified that the maximum height of the sign was to be measured from the grade of the adjacent roadway--not from the grade of the ground beneath the sign, as Mr. Bolden understood the regulation to be. Consequently, Mr. Bolden had the sign erected, relying on the permit as issued. Afterward, the Use and Occupancy Permit was issued.

Regardless of the history of this sign, the issue is now whether there is justification to authorize the requested variance to the maximum height of the sign above the grade of the adjacent roadway. If the variance is not authorized, the sign would have to be lowered at least 15 feet. This would result in the sign being as little as 3 feet above the grade of ground beneath the sign, and have a maximum height of 30 feet. (15' from the grade of the adjacent road + 3' to the base of the sign, + 12 feet of sign equals 30 feet.)

Article 10, "B-L" Local Business District; Section 10.5, Height regulations, specifies a maximum height of 2 1/2 stories or 35 feet for structures. Signs mounted on the roof of a building, or parapet wall may extend 4 feet above the roof line. [Article 14, Division II, Section 14.23(a).] In addition, any freestanding sign identifying a use on the premises may be erected to a maximum height of 30 feet. [Section 14.23(d).]

The Board agrees with Mr. Bolden's contention that with the sign setback from Westminster Pike, construction of the fuel station, including pump island canopies, and permissible signs in compliance with setback requirements will interfere with east bound motorists' vision of the sign. Thus, the value of the sign and its marketability would be adversely affected.

The Board also agrees that lowering the sign to as little as 3 feet above the ground will facilitate vandalism of the sign.

Conversely, authorization of the variance will not unduly affect adjacent properties or the public interest.

The issues of difficulty in lowering the sign and the costs involved are without merit.

Finally, if the sign is not located within the "B-L" Local Business district, the violation will have to be resolved.

CONCLUSION

The circumstances in this case including the topography of the site; reduction of the sign's visibility by construction of the automotive fuel station, which would adversely affect the sign's value and marketability; and, the increased risk of vandalism justify authorization of the requested variance.

In weighing the significance of the circumstances cited above, if the applicant had filed an application requesting the variance prior to erection of the sign, and the same circumstances existed, the variance would have been authorized.

Therefore, the Board hereby authorizes the variance as requested.

June 22, 1990  
Date

JDN/bmb/C3378DEC  
June 19, 1990

John Totura  
John Totura, Chairman